

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DALE A. DRISCOLL and DEPARTMENT OF THE NAVY,
EARLE NAVAL WEAPONS STATION, Colts Neck, NJ

*Docket No. 98-1354; Submitted on the Record;
Issued April 24, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained a recurrence of total disability on November 3, 1995 causally related to his June 2, 1993 employment injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained a recurrence of total disability on November 3, 1995 causally related to his June 2, 1993 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.¹ In the instant case, appellant has failed to establish either a change in the nature or extent of his light-duty requirements or a change in his accepted injury-related condition.

On June 2, 1993 appellant, then a 44-year-old electrical worker, sustained a lumbar strain in the performance of duty. He returned to work on August 30, 1993 in a light-duty capacity. Between July 15, 1994 and June 12, 1995, appellant was paid compensation benefits for temporary total disability when his light-duty position was terminated but he then returned to light-duty work. By decision dated September 29, 1995, the Office of Workers' Compensation Programs determined that appellant's light-duty reemployment on June 12, 1995 as a modified electrical worker fairly and reasonably represented his wage-earning capacity.

¹ See Cynthia M. Judd, 42 ECAB 246, 250 (1990); Stuart K. Stanton, 40 ECAB 859, 864 (1989).

On November 14, 1995 appellant filed a notice of recurrence of disability and claim for compensation alleging that on November 3, 1995 he sustained a recurrence of total disability, which he attributed to his June 2, 1993 employment injury and to the fact that he was terminated from his light-duty position at the employing establishment on November 24, 1995 due to a reduction-in-force (RIF). By decision dated July 19, 1996, the Office denied appellant's claim.

By letter dated July 29, 1996, appellant requested an oral hearing before an Office hearing representative. On July 8, 1997 a hearing was held before an Office hearing representative at which time appellant testified. By decision dated October 15, 1997, the Office hearing representative affirmed the Office's July 19, 1996 decision.

By letter dated November 10, 1997, appellant requested reconsideration of the denial of his claim and submitted additional evidence. By decision dated January 2, 1998, the Office denied appellant's request for reconsideration.

In form reports dated December 6, 1995 and January 10, 1996, Dr. Gordon D. Donald, III, appellant's attending orthopedic surgeon, diagnosed a herniated disc at L4-5 and L5-S1 and indicated that appellant was totally disabled. He indicated by checking the block marked "yes" that the condition was causally related to appellant's June 2, 1993 employment injury. However, the Board has held that an opinion on causal relationship, which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value.² Without any explanation or rationale, such a report is insufficient to establish causal relationship.³ Furthermore, Dr. Donald did not opine that appellant was totally disabled due to a change in the nature or extent of his accepted employment injury or a change in the nature or extent of his light-duty requirements. Therefore, these reports are not sufficient to establish that appellant sustained a herniated disc or a recurrence of total disability on November 3, 1995 causally related to his June 2, 1993 employment injury.

In a report dated March 2, 1996, Dr. Donald indicated that appellant was not able to perform his regular job but was able to perform light duty. As he did not opine that appellant was totally disabled due to a change in the nature or extent of his accepted employment injury or a change in the nature or extent of his light-duty requirements, this report does not discharge appellant's burden of proof.

In a form report dated April 23, 1996, Dr. Donald diagnosed a herniated disc at L4-5 and L5-S1 and indicated that appellant was totally disabled. He indicated by checking the block marked "yes" that the condition was causally related to the June 2, 1993 employment injury. However, as noted above, an opinion on causal relationship which consists only of checking "yes" to a form report question on whether the claimant's disability was related to the history given is of little probative value and is insufficient to establish causal relationship. Therefore, this report is insufficient to establish that appellant sustained a work-related recurrence of total disability on November 3, 1995.

² Donald W. Long, 41 ECAB 142, 146 (1989).

³ *Id.*

In a report dated November 5, 1997, Dr. Donald related that appellant had been able to return to work in a light-duty capacity on August 30, 1993 and had essentially no change in his functional status through April 23, 1996. He stated that appellant was “considered completely disabled from his job” commencing on May 28, 1996 but he also stated that appellant’s physical examination had remained unchanged. Dr. Donald stated that between April 15 and August 26, 1997 appellant’s physical examination was “unchanged” but his “symptoms” had slowly been increasing. He stated:

“[Appellant] has required prolonged and aggressive conservative treatment to try and manage his symptoms but has been medically unable to work since November 24, 1994 [sic 1995] due to this problem. [Appellant’s] symptoms have slowly been increasing and his condition overall has been deteriorating, requiring more and more periods of rest, marked activity modification and intermittent chiropractic treatment. He remains fully disabled from his work.”

However, Dr. Donald did not provide a sufficient explanation as to how appellant’s claimed recurrence of total disability on November 3, 1995 was causally related to his June 2, 1993 work-related lumbar strain. He stated that appellant’s “symptoms” had worsened but did not explain, if this was so, why appellant’s physical examinations were “unchanged.” Dr. Donald did not explain how there had been a change in the nature or extent of appellant’s work-related lumbar strain sustained on June 2, 1993 such that appellant was not able to perform light-duty work. He also did not explain how appellant’s claimed recurrence of total disability was caused by a change in the nature or extent of his light-duty physical requirements. Therefore, this report is not sufficient to establish that appellant sustained a recurrence of total disability on November 3, 1995 causally related to his June 2, 1993 employment injury.

As appellant has failed to show either a change in the nature and extent of his injury-related condition or a change in the nature and extent of his light-duty requirements, he has failed to meet his burden of proof and the Office properly denied his claim for a recurrence of total disability.

Regarding appellant’s claim that he was entitled to compensation benefits for a recurrence of total disability because he was terminated from the employing establishment on November 24, 1995 due to a RIF, the Office’s procedures specifically preclude a claim for a recurrence of total disability due to a RIF by an employing establishment which affects both full-duty and light-duty employees.⁴

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(2) and 2.1500.7(a)(4) (May 1997); *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.12 (July 1997).

The decisions of the Office of Workers' Compensation Programs dated January 2, 1998 and October 15, 1997 are affirmed.

Dated, Washington, D.C.
April 24, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member